

**APPENDIX D**  
Description of the Former Shpack Residence Parcel

United States of America

v.

City of Attleboro, Massachusetts, et al.

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Know all men by these presents that I, Lea Shpack, Surviving Joint Owner,

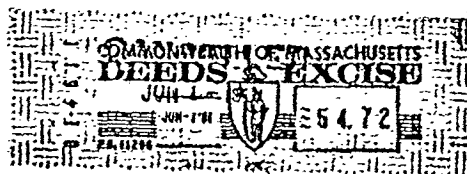
of Norton, Bristol County, Massachusetts  
for consideration paid of \$24,000.00  
grant to Edwin C. McGinn, Jr., 68 Union Road, Norton, Massachusetts,

with OUTCLARE COVENANTS  
the land is Norton, Massachusetts, with the buildings and improvements  
thereon, being Lot 2 on Plan of Land entitled: "Plan of Land on  
Union Road in Norton, Massachusetts, Prepared for: Lea Shpack  
Date: March 16, 1981, Freeman Engineering Company" which plan is  
to be recorded herewith. Said land is further bounded as follows:

NORTHERLY by Union Road, 622.64 feet;  
EASTERLY by Lot 3 on said plan, 539.27 feet;  
SOUTHEASTERLY by Lot 3 on said plan, 382.00 feet;  
SOUTHERLY by Lot 1 on said plan, 126.85 feet;  
WESTERLY by said Lot 1 a distance of 100.00 feet;  
WESTERLY AGAIN by said Lot 1, 285.04 feet;  
SOUTHWESTERLY by said Lot 1 a distance of 187.15 feet;  
SOUTHERLY by said Lot 1 a distance of 236.00 feet;  
AGAIN  
WESTERLY by said Lot 1 a distance of 175.00 feet.

Containing 5.33 acres more or less.

Being a portion of the premises conveyed to this grantor and  
Isadora Shpack by deed of Alonzo Haskell et ux, dated November 20, 1947  
recorded in Bristol County Northern District Registry of Deeds in  
Book 935 on Page 40.



Witness MY hand and seal this 1st day of June 1981

Lea Shpack

The Commonwealth of Massachusetts

BRISTOL, ss.

June 1, 1981

Then personally appeared the above-named Lea Shpack

and acknowledged the foregoing  
instrument to be her free act and deed, before me.

Charles C. Bennett NOTARY PUBLIC

My commission expires August 21, 1984

RECD JUN 1 1981 AT 3-5 9PM AND RECORDED

Address of Property: 68 Union Road, Norton, Massachusetts

**APPENDIX E**

List of Owner Settling Defendants

United States of America

v.

City of Attleboro, Massachusetts, et al.

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**Appendix E**

**List of the Owner Settling Defendants**

Town of Norton, Massachusetts

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**APPENDIX F**  
List of Performing Defendants

United States of America

v.

City of Attleboro, Massachusetts, et al.

**Appendix F**

**List of the Performing Defendants**

City of Attleboro, Massachusetts

Avnet, Inc.

Bank of America, N. A., Trustee u/w of Lloyd G. Balfour

BASF Catalysts LLC (f/k/a Englehard Corporation)

Chevron Environmental Management Company, for itself and on behalf of  
Kewanee Industries, Inc.

ConocoPhillips Company

Handy & Harman

International Paper Company

KIK Custom Products, Inc. (f/k/a CCL Custom Manufacturing, Inc.)

Swank, Inc.

Teknor Apex Co.

Texas Instruments Incorporated

Waste Management of Massachusetts, Inc.

**APPENDIX G**

List of Non-Owner Settling Defendants

United States of America

v.

City of Attleboro, Massachusetts, et al.

**Appendix G**

**List of the Non-Owner Settling Defendants**

City of Attleboro, Massachusetts

Avnet, Inc.

Bank of America, N. A., Trustee u/w of Lloyd G. Balfour

BASF Catalysts LLC (f/k/a Englehard Corporation)

Chevron Environmental Management Company, for itself and on behalf of  
Kewanee Industries, Inc.

ConocoPhillips Company

Handy & Harman

International Paper Company

KIK Custom Products, Inc. (f/k/a CCL Custom Manufacturing, Inc.)

Swank, Inc.

Teknor Apex Co.

Texas Instruments Incorporated

Waste Management of Massachusetts, Inc.



**APPENDIX H**  
**List of Settling Federal Agencies**

United States of America

v.

City of Attleboro, Massachusetts, et al.

**Appendix H**

**List of the Settling Federal Agencies**

United States Department of Energy

**APPENDIX I**  
Replacement Paragraphs

United States of America

v.

City of Attleboro, Massachusetts, et al.

## APPENDIX I

As provided in Paragraph 120 of the Consent Decree, the following Paragraphs 21, 22, 52, 86, 87, 88, 89, 90, 91, 94, 95 and 102 shall replace Paragraphs 21, 22, 52, 86, 87, 88, 89, 90, 91, 94, 95 and 102 of the Consent Decree on the date that EPA issues written notice to the Performing Defendants of the Completion of the FUSRAP Response Action:

21. Performing Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Performing Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 88 or Paragraph 89 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Performing Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 88 or Paragraph 89 of Section XXI (Covenants by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to the whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 71 (record review).

22. Submissions of Plans. If Performing Defendants are required to perform the further response actions pursuant to Paragraph 21, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Performing Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

\* \* \*

52. Certification of Completion of the Remedial Action and the Work.

a. Completion of the Remedial Action. Within 90 days after Performing Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Defendants, EPA, and the Commonwealth. If, after the pre-certification inspection, the Performing Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the Commonwealth, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and the Performing Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Performing Defendant or the

Performing Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the Commonwealth, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Performing Defendants in writing of the activities that must be undertaken by Performing Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 15.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

(1) If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the Commonwealth, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Performing Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants by Plaintiff). Certification of Completion of the Remedial Action shall not affect Performing Defendants' obligations under this Consent Decree.

b. Completion of the Work. Within 90 days after Performing Defendants conclude that all phases of the Work (including O & M), have been fully performed, Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Defendants, and EPA and the Commonwealth. If, after the pre-certification inspection, the Performing Defendants still believe that the Work has been fully performed, Performing Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Performing Defendant or the Performing Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the Commonwealth, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Performing Defendants in writing of the activities that must be undertaken by Performing Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 15.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

(1) If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Performing Defendants and after a reasonable opportunity for review and comment by the Commonwealth, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Performing Defendants in writing.

\* \* \*

86. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 88, 89, and 91 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, and Section 7003 of RCRA, relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the entry of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 51.a of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including, but not limited to, payment of Future Response Costs pursuant to Section XVI. These covenants not to sue extend only to the Settling Defendants, do not extend to any other person.

87. In consideration of the actions that will be performed and the payments that will be made by the Settling Federal Agencies under the terms of the Consent Decree, and except as

specifically provided in Paragraphs 88, 89, and 91 of this Section, the United States covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, and Section 7003 of RCRA, relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon entry of this Consent Decree. With respect to future liability, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 51.a of Section XIV (Certification of Completion). These covenants are conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. These covenants extend only to the Settling Federal Agencies and do not extend to any other person.

88. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies, to perform further response actions relating to the Site, or to reimburse the United States for additional costs of response if, (a) prior to Certification of Completion of the Remedial Action (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

89. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies, to perform further response actions relating to the Site, or to reimburse the United States for additional costs of response if, (a) subsequent to Certification of Completion of the Remedial Action (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

90. For purposes of Paragraph 88, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 89, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD

administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

91. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all matters not expressly included within Plaintiff's covenant in Paragraph 86 and 87. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants, and EPA and the federal natural resource trustees reserve all rights against the Settling Federal Agencies, with respect to:

- a. claims based on a failure by Settling Defendants or the Settling Federal Agencies to comply with the requirements of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 15 (Modification of the SOW or Related Work Plans); and
- h. liability for costs incurred or to be incurred by the United States pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site.

\* \* \*

94. Covenant Not to Sue by Settling Defendants. Subject to the reservations in this Paragraph 94, Paragraph 96 and Paragraph 97, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the



Site or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or
- c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Massachusetts Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 99 (Waiver of Claims Against Certain MSW Parties) and Paragraph 105 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 88, 89, 91 (b) - (d) or 91 (g), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

95. Covenant By Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300), except that Settling Federal Agencies agree not to assert any such demand for costs incurred pursuant to the Formerly Utilized Sites Remedial Program. Furthermore, this covenant does not preclude the United States from seeking recovery (other than claims against the Hazardous Substance Superfund) of costs incurred under the Formerly Utilized Sites Remediation Program related to the Site, or for contribution with respect to such costs.

\* \* \*

101. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and the Settling Federal Agencies are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and any other applicable law, for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site. The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree

(except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants (and EPA and the federal natural resource trustees assert rights against Settling Federal Agencies) coming within the scope of such reservations. The "matters addressed" in this settlement also do not include any costs or response actions performed by the United States at the Site pursuant to the Formerly Utilized Sites Remedial Action Program.

**APPENDIX J**  
Memorandum of Agreement

United States of America

v.

City of Attleboro, Massachusetts, et al.

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MEMORANDUM OF AGREEMENT  
BETWEEN  
THE CITY OF ATTLEBORO, MASSACHUSETTS  
AND  
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Department of the Army ("DA") and the City of Attleboro, Massachusetts ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA goods and services relating to environmental support. This MOA is entered into pursuant to 10 U.S.C. § 3036(d).

ARTICLE II - SCOPE

Goods and services that the DA may provide under this MOA include, but are not limited to, the following and such other related goods or services as may be agreed upon in the future.

Attleboro has requested support from DA for the disposal of radium and uranium-contaminated material excavated from the Shpack Landfill Superfund Site (the "Site"). The Site is composed of two dumps, the Attleboro dump, also referred to as the burning dump, and the Shpack dump. It is a 9.4 acre tract of land on the border of the Town of Norton, Massachusetts and the City of Attleboro, Massachusetts.

The Site received both residential and industrial waste. The Attleboro dump received waste and was operated as an open burning dump from approximately 1946 through 1965. In 1965, the Attleboro burning dump was closed pursuant to a court order. The Shpack dump received waste from approximately 1946 through 1975. In 1978, a concerned citizen detected elevated radiation levels at the site and contacted the Nuclear Regulatory Commission. The Commission investigated and confirmed the presence of radioactivity in excess of natural background levels for the area. The radioactivity was primarily caused by the presence of uranium and radium. It is not known when radioactive contaminants were deposited at the Site, or who deposited such contaminants. Government contractors working on projects for the Atomic Energy Commission in the 1950s and 1960 are a possible source of the uranium found at the Site.

In 2002, the Site was listed as a FUSRAP eligible site, and the Corps began response work on the Site on August 22, 2005. The Corps anticipates that the FUSRAP portion of the cleanup will be completed in September 2009. After the FUSRAP portion of the cleanup is complete, a private PRP group (the "Performing PRPs") will begin to remediate the remaining waste at the site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. § 9601-9675), and other laws. Because the Corps, under FUSRAP, is cleaning the Site to standards set out in a Record of Decision, the CERCLA waste to be removed by the Performing PRPs is likely to be contaminated by below-action-level radioactive material.

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The Performing PRPs will perform the excavation and packaging of the material and will transport the material to the disposal facility. DA may provide disposal services to Attleboro through the use of contractors and will be responsible for procurement and management of the DA contracts. If disposal services are provided by DA, disposal shall occur pursuant to and consistent with existing contracts with disposal facilities or pursuant to and consistent with newly negotiated government contracts with such disposal facilities.

These goods and services are intended to assist Attleboro in meeting its requirements under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. § 9601-9675), and other laws. Attleboro has applied to and received approval from the Environmental Protection Agency (EPA) for a cooperative agreement that provides federal financial assistance to Attleboro for a portion of the project undertaken under this MOA.

Nothing in this MOA shall be construed to require Attleboro to use the DA or to require the DA to provide any goods or services to Attleboro, except as may be set forth in Support Agreements ("SAs").

### ARTICLE III - INTERGOVERNMENTAL COMMUNICATIONS

To provide for consistent and effective communication between the DA and Attleboro, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on SAs.

Principal DA Representative for MOA – Mark Otis, Chief, Environmental Project Management Branch, New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751, (978) 318-8895.

DA SA Representative – Timothy Beauchemin, Project Manager, New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751, (978) 318-8616.

Attleboro's Principal Representative – Mayor Kevin J. Dumas

Attleboro's Project Manager –

### ARTICLE IV - SUPPORT AGREEMENTS

In response to requests from Attleboro for DA assistance under this MOA, the DA and Attleboro shall conclude mutually agreed upon written SAs. Those SAs must be either on Engineer Form 4914-R or a similar document containing the same information as Department of Defense Form 1144. **SAs must include:**

- a detailed scope of work statement;
- schedules;
- funding arrangements (funding must be received in advance of obligation);
- the amount of funds required and available to accomplish the scope of work as stated

above;

- Attleboro's fund citation and the date upon which the cited funds expire for obligation purposes;

- identification of individual project managers;
- identification of types of contracts to be used (if known);
- types and frequencies of reports;
- procedures for amending or modifying the SA; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods or services shall be provided under this MOA only after an appropriate SA has been signed by a representative of each party authorized to execute that SA. Upon signature by each party's representative, an SA shall constitute a valid order under 10 U.S.C. § 3036(d) (the Chief's Economy Act). In the case of conflict between this MOA and an SA, this MOA shall control.

## ARTICLE V - RESPONSIBILITIES OF THE PARTIES

### A. Responsibilities of the Department of the Army

1. The DA may provide Attleboro with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in SAs. At the time of signing of this MOA, it is unknown if the DA will have any disposal contracts available for use or if DA will have any capacity under a disposal contract available for use at the time the services are requested. Services provided by DA under this MOA shall consist of disposal services and shall not include excavation, screening, sampling, packaging or transportation.

2. The DA shall ensure that only authorized DA representatives sign SAs.

3. The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

4. The DA shall provide reports to Attleboro as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended and on forecast obligations and expenditures. The DA shall include an itemization of all of its estimated costs for each SA at the time the SA is presented for signature

5. The DA shall inform Attleboro of all contracts entered into under each SA.

6. The DA shall perform contract administration on DA contracts.

7. The DA, as well as Attleboro, shall be responsible for records retention/maintenance; however, the DA shall maintain all of the official contract files for DA contracts.

8. The DA shall perform contract audits on DA contracts, if any.

## B. Responsibilities of the City of Attleboro, Massachusetts

1. Attleboro shall certify, prior to the execution of each SA under this MOA, that the SA complies with the requirements of 10 U.S.C. § 3036(d)(2).
2. Attleboro shall obtain the agreement to and signature of the U.S. Environmental Protection Agency (EPA) on the certification attached to this MOA. Attleboro shall ensure that it has received the agreed-upon funds from EPA prior to its execution of each SA.
3. Attleboro shall pay for all costs associated with the DA's provisions of goods or services under this MOA and shall certify, at the time of signature of an SA, the availability of funds necessary to accomplish that SA.
4. As between Attleboro and the DA and its contractors, Attleboro shall retain legal liability, if any, for all hazardous substances and wastes disposed under this MOA. As between Attleboro and the Performing PRPs, the Performing PRPs shall retain legal liability, if any, for all hazardous substances and wastes disposed under this MOA.
5. Attleboro shall ensure that only authorized Attleboro contracting officers sign SAs.
6. Attleboro shall draft SAs, to include scope of work statements.
7. The parties understand that any permits from federal, state and local agencies necessary for the disposal activities specified to be performed by the DA's contractors under each SA will be obtained by Attleboro, though Attleboro may satisfy this obligation through its agent(s).
8. Attleboro, as well as the DA, shall be responsible for records retention/maintenance; however, the DA shall be responsible for all official contract files for DA contracts.

C. Additional responsibilities, if any, will be defined in the SAs.

## ARTICLE VI – FUNDING

Attleboro shall pay for all costs associated with the DA's provision of goods or services under this MOA. The costs shall be fully set out and itemized in, and may only be incurred pursuant to, individual SAs. Each SA shall set forth the maximum amount to be expended under the SA, which shall not be exceeded without a subsequent amendment of the SA signed by authorized representatives of the parties, except for Attleboro's liabilities that arise under the SA or this MOA. Funds for the services to be provided by the DA under each SA shall be provided in advance via a check or checks made out to "FAO, USAED, New England" and submitted to the following address: U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742-2751 Established Federal Government accounting procedures shall be used.

If the DA forecasts its actual costs under an SA to exceed the amount of funds available under that SA, it shall promptly notify Attleboro of the amount of additional funds necessary to complete the work under that SA. Attleboro shall provide the additional funds to the DA, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that SA.

Within 90 days of completing the work under an SA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return any funds advanced in excess of the actual costs as then known, to an account in a financial institution as directed by Attleboro, or Attleboro shall pay any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit Attleboro's duty in accordance with Article XI to pay for any costs, such as contract claims or other Attleboro liability to the DA related to work done on behalf of Attleboro, which may become known after the final accounting.

#### ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

#### ARTICLE VIII - MANIFESTS AND RELATED DOCUMENTS

Attleboro will ensure that authorized personnel sign all documents pertaining to the transportation or disposal of the materials to be handled by DA under this MOA and any SA issued pursuant to it, to the extent any document must be signed by a generator. At the request of Attleboro, DA may assist in determining the form and content of the necessary documents. Attleboro will ensure that valid and reliable waste characterization information and any other information necessary to complete the documents is provided. DA will apply its existing waste handling and documentation procedures established for the types of materials to be shipped and the contracts to be used for the work. Attleboro is responsible for coordinating with EPA in accordance with 40 CFR 300.440, as applicable, for all shipments and for advising DA of the completion of this requirement. Attleboro is responsible for all applicable records retention requirements related to the shipping documents. Attleboro and DA will furnish to each other copies of any shipping related documents as requested, if not previously furnished to the other.

#### ARTICLE IX - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) or its successor is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.



The DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify Attleboro of any such litigation and afford Attleboro an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations. The DA agrees to request the Department of Justice to allow Attleboro or the Performing PRPs to participate in the defense and settlement of any litigation that would result in Attleboro's or the Performing PRPs' incurring any liability.

#### ARTICLE X - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, Attleboro and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the District Engineer, New England District, U.S. Army Corps of Engineers.

#### ARTICLE XI - RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, the DA will accept accountability for its actions, but Attleboro shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should Attleboro have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, it will remain responsible for seeking additional funds.

The obligations of Attleboro under this MOA or any renewal or holdover shall extend only to monies provided by the Performing PRPs for the purposes of Attleboro's payment obligations under this MOA, or as otherwise appropriated by the Attleboro City Council. DA acknowledges that (i) Attleboro does not by this MOA irrevocably pledge present cash reserves for payments in future fiscal years and (ii) this MOA is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of Attleboro. Should Attleboro have insufficient funds provided by the Performing PRPs, Attleboro agrees to seek additional funds from the Performing PRPs. In the event that the Performing PRPs fail to provide additional funds, Attleboro shall seek an appropriation of additional funds by the Attleboro City Council. For all SAs, Attleboro shall not execute an SA without sufficient funds being available to pay all amounts required by the SA and this MOA.

#### ARTICLE XII - PUBLIC INFORMATION

Justification and explanation of Attleboro's programs before other agencies, departments, and offices shall be the responsibility of Attleboro. The DA may provide, upon request, any assistance necessary to support Attleboro's justification or explanations of Attleboro's programs conducted under this MOA. In general, Attleboro is responsible for all public information

regarding Attleboro's projects. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. Attleboro or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to SAs under this MOA.

#### ARTICLE XIII - MISCELLANEOUS

##### A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between Attleboro and the DA.

##### B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

##### C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

##### D. Examination of Records

Any authorized agent of Attleboro, including the City Auditor or his or her representative, shall, until the expiration of three (3) years after the final payment under this Agreement, have the right to access to and the right to examine any directly pertinent books, documents, papers and records of the DA, involving transactions related to this Agreement without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

#### ARTICLE XIV – AMENDMENT, MODIFICATION, AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, Attleboro shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of closing out or transferring any on-going contracts.

#### ARTICLE XV - EFFECTIVE DATE

This MOA shall become effective when signed by both Attleboro and the DA.

**U.S. DEPARTMENT OF THE ARMY**

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Philip T. Feir  
Colonel, Corps of Engineers  
District Commander

Date: 6 October 2008

CITY OF ATTLEBORO  
ATTEST: A .

\_\_\_\_\_  
Mayor Kevin J. Dumas

Date: 9/11/08

### 10 USC § 3036(d) CERTIFICATION

I am aware of the requirements of the City of Attleboro (Attleboro) for disposal of uranium- and radium-contaminated material from property in Attleboro and Norton, Massachusetts, and related project management services. I am further aware that Attleboro proposes to place with the U.S. Army Corps of Engineers an intergovernmental order, pursuant to 10 USC § 3036(d)(2), to accomplish this work. I certify that the work to be undertaken involves Federal financial assistance provided by the U.S. Environmental Protection Agency (EPA) to Attleboro. I further certify that the EPA does not object to the provision of these services by the Chief of Engineers.

James T. Owens, III  
Director, Office of Site Remediation &  
Restoration  
U.S. Environmental Protection Agency  
Region 1

September 11, 2008  
Date

**APPENDIX K**  
Draft Easement

United States of America

v.

City of Attleboro, Massachusetts, et al.

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**GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT**

42 U.S.C. § 9601, et seq. [, and M.G.L. c. 21E, § 6]

~~[reference Chapter 21E only if MassDEP is a Grantee]~~

[Note: This instrument is established as an institutional control for a federal Superfund site pursuant to \_\_\_\_\_ ~~[add reference to Governing Agreement and any separate agreement with the landowner]~~, as set forth below, and contains a GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT running to [the UNITED STATES on behalf of its ENVIRONMENTAL PROTECTION AGENCY] ~~[include the following only if MassDEP is a Grantee]~~ [and/or] [the MASSACHUSETTS DEPARTMENT of ENVIRONMENTAL PROTECTION]]

Disposal Site Name: \_\_\_\_\_  
Site Location: \_\_\_\_\_ [Town/City], MA  
EPA Site Identification Number: \_\_\_\_\_  
MassDEP Release Tracking No. \_\_\_\_\_

This GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT (the "Grant") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, of \_\_\_\_\_ ~~[insert property owner's address]~~ ("Grantor").

**WITNESSETH:**

WHEREAS, Grantor is the owner in fee simple of that [those] certain parcel(s) of [vacant] land located in \_\_\_\_\_ ~~[insert Town/City]~~ \_\_\_\_\_ County, Massachusetts, [with the buildings and improvements thereon], pursuant to [a deed recorded with the \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_]; ~~[or insert source of title other than by deed]~~; and/or [Certificate of Title No. \_\_\_\_\_ issued by the Land Registration Office of the \_\_\_\_\_ Registry District];

WHEREAS, said parcel(s) of land, known and/or numbered as \_\_\_\_\_, which is [are] more particularly bounded and described in Exhibit A ("Legal Description of the Property"), attached hereto and made a part hereof (the "Property"), is [are] subject to this Grant. The Property is shown on [a plan entitled "\_\_\_\_\_"] prepared by \_\_\_\_\_, dated \_\_\_\_\_, recorded with the \_\_\_\_\_ Registry of Deeds in Plan Book \_\_\_\_\_, Plan \_\_\_\_\_], and/or on [Land Court Plan No. \_\_\_\_\_] [shown as Lot \_\_\_\_\_];

[WHEREAS, that [those] certain portion(s) of the Property subject to restrictions has [have] been designated \_\_\_\_\_ ~~[list names of each type of restricted area, such as "Area A" or "the Cap Area" this reference, legal descriptions and survey plan]~~

*must use internally consistent terminology*] ([collectively, all of the foregoing restricted areas comprising] the "Restricted Area");]

[WHEREAS, the Restricted Area is bounded and described in Exhibit A-1 ("Legal Description of the Restricted Area"), attached here to and made a part hereof;]

[WHEREAS, the Restricted Area is shown on a plan ~~[refers to a survey plan showing the restricted area and perimeter of each subdivided lot comprising the portion of the Property where the Restricted Area is located]~~ consisting of \_\_\_\_\_ sheet(s), entitled "Plan of Restricted Area" prepared by \_\_\_\_\_, dated \_\_\_\_\_, and recorded in the \_\_\_\_\_ Registry of Deeds in Plan Book \_\_\_\_\_, Plan \_\_\_\_\_; [and on a sketch plan attached hereto and filed herewith for registration]] ~~[note that a full-size plan must be recorded on the unregistered side, even for registered land];~~

WHEREAS, the Property [and the Restricted Area] is [are] subject to covenants, restrictions, easements and other rights and obligations under the terms and conditions of this instrument;

WHEREAS, [a portion of] the Property [is part of] [contains] a federal Superfund Site, known as the \_\_\_\_\_ Superfund Site (the "Site"). The U.S. Environmental Protection Agency, an agency established under the laws of the United States, having its New England regional office at One Congress Street, Boston, Massachusetts 02114 ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9605, placed the Site on the National Priorities List, set forth at 40.C.F.R. Part 300, Appendix B, by publication in the Federal Register on \_\_\_\_\_, \_\_\_\_\_ Fed. Reg. \_\_\_\_\_, due to a release of hazardous substances, as that term is defined by the Section 104 of CERCLA, 42 U.S.C. § 9604.

WHEREAS, the Massachusetts Department of Environmental Protection, a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, having its principal office at One Winter Street, Boston, Massachusetts 02108 ("MassDEP"), as a result of the release of oil and/or hazardous materials at the Property, as those terms are defined in the Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act, M.G.L. c. 21E, as amended ("Chapter 21E"), has placed [a portion of] the Property on the Massachusetts List of Confirmed Disposal Sites and Locations to be Investigated pursuant to Chapter 21E and the Massachusetts Contingency Plan, 310 CMR 40.0000 (the "MCP"), has classified [such portion of] the Property as a Tier IA disposal site and has assigned to thereto MassDEP Release Tracking Number(s) \_\_\_\_\_;

WHEREAS, in a document entitled, "Record of Decision, \_\_\_\_\_ Superfund Site," dated \_\_\_\_\_ ~~[include in this definition any ROD Amendments or Explanations of Significant Differences]~~ (the "ROD"), said ROD being on file at the United States Environmental Protection Agency, Region I ("EPA") Record Center located at One Congress Street, Boston, Massachusetts, EPA, with the concurrence of MassDEP on \_\_\_\_\_ ~~[fill in date of state concurrence letter]~~, has selected one or more response actions (collectively, the "Selected Remedy") for the Site in accordance with CERCLA, 42 U.S.C. §§ 9601, *et seq.*, and the National Contingency Plan, 40 CFR §§ 300.1, *et seq.* (the "NCP");



WHEREAS, the Selected Remedy is based, in part, upon the restriction of human access to and contact with hazardous substances in soil and groundwater; and the restriction of certain uses and activities occurring in, on, through, over or under the Property;

*[Using one of the two sample paragraphs below as a model, identify the Performing Party (the person including a federal agency who developed the GERE and is applying to MassDEP to accept it) and the Governing Agreement (the agreement, in addition to the ROD, pursuant to which the Performing Party developed the GERE, such as a consent decree, administrative order on consent, or other agreement; for a fund-lead site, the ROD typically would serve as the Governing Agreement)]*

[WHEREAS, \_\_\_\_\_, a \_\_\_\_\_ corporation having a mailing address of \_\_\_\_\_ (the "Performing Party") is performing a portion of the Selected Remedy pursuant to a consent decree (the "Consent Decree" also referred to herein as the "Governing Agreement") entered into with the United States and the Commonwealth of Massachusetts in the [consolidated] actions captioned *U.S. v. \_\_\_\_\_*, and *Commonwealth of Massachusetts v. \_\_\_\_\_*, Docket Numbers \_\_\_\_\_ and \_\_\_\_\_ (D. Mass.), respectively;]

[WHEREAS, the United States of America, acting through EPA (the "Performing Party"), having entered into a Superfund State contract for \_\_\_\_\_ *[reference Site and Operable Unit]* with the Commonwealth of Massachusetts, acting through MassDEP, entitled, "\_\_\_\_\_" and dated \_\_\_\_\_ on file at each agency, and pursuant to the ROD (also referred to herein as the "Governing Agreement"), is performing the Selected Remedy;

*[Include the following paragraph only if MassDEP is a Grantee.]*

[WHEREAS, MassDEP, pursuant to Sections 3(a) and 6 of Chapter 21E, is authorized to take all action appropriate to secure to the Commonwealth the benefits of CERCLA and to acquire an interest in real property if necessary to carry out the purposes of Chapter 21E, and is willing to accept this Grant as joint Grantee with the United States or as sole Grantee, as the case may be;]

*[In the following paragraph, include a reference to the plan for inspecting and reporting on compliance with the GERE, such plan having been developed as part of the Selected Remedy pursuant to the Governing Agreement (e.g., a consent decree and associated scope of work).]*

WHEREAS, EPA has approved a plan entitled "\_\_\_\_\_" prepared on behalf of \_\_\_\_\_, by \_\_\_\_\_, and dated \_\_\_\_\_ (the "Compliance Inspection and Reporting Plan"), a copy of which is attached hereto as Exhibit B, and which is on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts;

*[The following paragraph should only be included if Grantor is responsible in Section 5 ("Obligations and Conditions") for performing operations and maintenance described in the*

*operation and maintenance plan for the Selected Remedy. Also, this paragraph and the preceding paragraph may be combined, if the ROD and/or SOW contemplate that the operation and maintenance plan will incorporate the compliance inspection and reporting plan as a component of it. In such cases, the compliance inspection and reporting plan should at a minimum be separately noted in the combined paragraph.]*

[WHEREAS, EPA has approved a plan entitled “\_\_\_\_\_,” prepared on behalf of \_\_\_\_\_, by \_\_\_\_\_, and dated \_\_\_\_\_ (the “Operation and Maintenance Plan”), a copy of which is attached hereto as ExhibitB-1, and which is on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts;] [and]

*[If EPA entered into a separate agreement with the landowner, add the following paragraph.]*

[WHEREAS, Grantor and the United States of America, acting through EPA, entered into an agreement styled “\_\_\_\_\_,” effective \_\_\_\_\_, EPA Docket Number CERCLA \_\_\_\_\_ (the “Agreement”), a copy of which is on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts, in which Grantor agreed to perform certain response actions at the Site, including without limitation to implement environmental restrictions and an access easement such as the within Grant, pursuant to Paragraph \_\_\_\_ (“Access and Institutional Controls”) of the Agreement;]

NOW, THEREFORE, pursuant to the terms and provisions of the Governing Agreement [and \_\_\_\_\_] *[reference any separate agreement with the landowner]* identified above, [the receipt and sufficiency of which consideration is hereby acknowledged,] (“Grantor”), hereby GIVES, GRANTS and CONVEYS to the [UNITED STATES ON BEHALF OF ITS ENVIRONMENTAL PROTECTION AGENCY] [and the] [MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION] *[MassDEP should be included only if MassDEP agrees to be a Grantee]* [(collectively,] “Grantee”), as a gift, with QUITCLAIM COVENANTS, an ENVIRONMENTAL RESTRICTION (“Restriction”) in, on, through, over and under the Property. Said Restriction is subject to the following terms and conditions:

1. Purpose. It is the purpose of this Grant to establish covenants and restrictions and to convey to Grantee real property rights involving access and enforcement, all of which shall run with the land, to facilitate the remediation of environmental contamination, and to protect human health and the environment by reducing the risk of exposure to contaminants.

2. Applicability. The restrictions set forth in Paragraph 3 (“Restricted Uses and Activities”) shall not apply to:

A. any response action undertaken by EPA or MassDEP, or their respective agents, representatives, contractors, subcontractors or employees, pursuant to CERCLA or Chapter 21E, and their respective implementing regulations [; or]

[B. any response action undertaken by the Performing Party, or its agents, representatives, contractors, subcontractors or employees, in accordance with and pursuant to the Governing Agreement, and any approval by EPA and/or MassDEP required thereunder]; ~~[if the Performing Party has no obligation to perform response actions or operation and maintenance after this Grant has been recorded, or in the atypical circumstance where there is no Governing Agreement in a non-fund-lead response action, delete this paragraph]~~

provided, however, that if any such response action results in a change in the areal extent or grade of any portion of the Property required to be restricted under this instrument to ensure that the Selected Remedy is protective of human health and the environment, or if Grantee otherwise determines that it is necessary or appropriate to amend or partially release this instrument as a result of such response actions, then the person performing such response action shall, in accordance with the requirements of Paragraph 14 ("Amendment and Release"), (i) obtain Grantor's agreement to amend this instrument, including the Plan of Restricted Areas, and/or to partially release this instrument, as applicable, (ii) with Grantor's agreement submit an application to Grantee therefor, and (iii) ensure that all actions necessary to effectuate such an amendment and/or partial release are taken. Further provided, and that for response actions described in Paragraph 2.B., above, all costs of performing the foregoing obligations shall be at the Performing Party's sole cost and expense, notwithstanding the provisions of Paragraph 14 ("Amendment and Release").

3. Restricted Uses and Activities. Except as provided in Paragraph 2 ("Applicability"), Paragraph 4 ("Permitted Uses and Activities") and Paragraph 6 ("Emergency Excavation"), Grantor shall not perform, suffer, allow or cause any person to perform any of the following activities in, on, upon, through, over or under [the Property] [the Restricted Area] [each Restricted Area identified below] or any portion thereof, or any of the following uses to be made of [the Property] [the Restricted Area] [each Restricted Area identified below] or any portion thereof:

~~[if there are multiple restricted areas, identify each such area and list applicable restrictions for each]~~

~~[sample restrictions in brackets; site specific restrictions must satisfy the requirements of the Selected Remedy;]~~

A. [excavation, removal or disposal of any loam, peat, gravel, sand, rock or other mineral or natural resource;]

B. [extraction, consumption or utilization of groundwater underlying the Property for any purpose, including without limitation extraction for potable, industrial, irrigation or agricultural use;]

C. [agricultural use or activity];

D. [residential use or activity;]

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E. [day care or, for children under eighteen (18) years of age, educational use or activity;]

F. [recreational use or activity;]

G. [hotel or motel use or activity;]

H. [commercial use or activity;]

I. [industrial use or activity;]

J. \_\_\_\_\_ *[list any other restricted uses and/or activities;]* and

K. any use or activity which would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including but not limited to cap(s), cover(s) or other ground covering features of response actions conducted to implement the Selected Remedy; [systems to collect, contain, treat, and discharge groundwater]; [systems or containment areas to excavate, store, treat, and dispose of soils and sediments]; and [systems and studies to monitor implementation of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater, soils, and sediments, and to ensure that the remedial action is effective in the long-term and protective of human health and the environment]. Reference is made to the Plan of Restricted Areas [and to the As-Built Records, on file on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts], which provide(s) information about the location within the Property and engineering details, respectively, of certain of the foregoing components of the Selected Remedy. *[include references to important site specific components of the Selected Remedy, including where detailed information about them may be found]*

4. Permitted Uses and Activities. Grantor expressly reserves the right to perform, suffer, or allow, or to cause any person to perform (i) any use or activity in, on, upon, through, over, or under the Property that is not listed in Paragraph 3 ("Restricted Uses and Activities") of this Grant; and (ii) any of the following activities in, on, upon, through, over or under the [the Property] [the Restricted Area] [each Restricted Area identified below], or any portion thereof, or any of the following uses to be made of the [the Property] [the Restricted Area] [each Restricted Area identified below], or any portion thereof:

*[if there are multiple restricted areas, each with its own set of permitted uses and activities, then identify each such area and list its permitted uses and activities.]*

*[sample permitted uses and activities:]*

[A. Notwithstanding the restriction on excavation set forth in Paragraph 3.A, above, excavation, unless such excavation would permanently modify the areal extent or grade of the [Property] [Restricted Area], is permitted, subject to the following:

*[identify any requirements including any applicable health and safety, soil management or ground water/surface water management protocols (attach protocols as appendices and incorporate by reference)]*

(i) \_\_\_\_\_;

(ii) \_\_\_\_\_; and

(iii) \_\_\_\_\_;]

[B. Notwithstanding the restriction on \_\_\_\_\_ set forth in Paragraph 3 \_\_, above, such activities and uses as may be required to perform the requirements of the Operation and Maintenance Plan set forth in Paragraph 5.A;]

[C. Notwithstanding the restriction on \_\_\_\_\_ set forth in Paragraph 3 \_\_, above, such activities and uses as may be required to perform the requirements of the Restriction Compliance Inspection Plan set forth in Paragraph 5.B;] and

[D. *list any other permitted uses and/or activities;*]

E. The provisions of this Paragraph 4 ("Permitted Uses and Activities") shall not release Grantor or any other party from liability for releases of oil or hazardous substances, nor shall this provision excuse Grantor or any other party from complying with CERCLA, Chapter 21E, or any other applicable federal, State or local laws, regulations or ordinances.

5. Obligations and Conditions. Grantor affirmatively agrees to perform the following activities [and][or] to maintain the following conditions at the Restricted Area in order to maintain the [Selected Remedy]:

A. [The following requirements of the Operations and Maintenance Plan:

(i) \_\_\_\_\_;

(ii) \_\_\_\_\_; and

(iii) \_\_\_\_\_;]

B. [The following requirements of the Restriction Compliance Inspection Plan:

(i) \_\_\_\_\_;

(ii) \_\_\_\_\_; and

(iii) \_\_\_\_\_;]

C. *[insert other specific activities and conditions set forth in the Governing Agreement or other applicable document, if any]*

6. Emergency Excavation. If it becomes necessary to excavate within the Restricted Area as part of a response to an emergency (e.g., repairing utility lines or responding to a fire or flood), and such excavation could result in a significant risk of harm from exposure to the hazardous substances located within the Restricted Area, the requirements of Paragraph 3.A of this Grant shall be suspended with respect to such excavation for the duration of such response, provided that Grantor:

A. orally notifies the following persons of such emergency as soon as possible but no later than two (2) hours after having learned of such emergency:

i. EPA Office of Site Remediation and Restoration, Emergency Planning and Response Branch; and

ii. MassDEP \_\_\_\_\_ Regional Office of Emergency Response Section;

or such other persons as [either] Grantee, [respectively], may identify in writing, from time to time, to Grantor for such emergency response notifications;

B. notifies [each] Grantee in writing of such emergency no later than five (5) days after having learned of such emergency [, with a copy to the Performing Party];

C. limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency;

D. implements all measures necessary to limit actual or potential risk to the public health and environment [, including the following:

i. \_\_\_\_\_;

ii. \_\_\_\_\_; and

iii. \_\_\_\_\_;]

E. engages a qualified environmental professional satisfactory to EPA, unless MassDEP is a Grantee, in which case Grantor must instead engage a hazardous waste site cleanup professional, who is a "Licensed Site Professional" ("LSP") as defined in the MCP at 310 CMR 40.0006(12), to oversee the implementation of this Paragraph, and to prepare and oversee the implementation of a written plan which will restore the [Property] [Restricted Area] to a condition which meets or exceeds the performance standards established under the ROD for the Selected Remedy and which is consistent with this Restriction, and to review and evaluate response actions contained in said plan to ensure minimal disturbance of the contaminated soils; Grantor to implement said plan as soon as reasonably possible following such emergency; and a copy of said plan to be submitted to MassDEP and EPA, within ten (10) days of its performance, with a statement from the LSP confirming that the [Property] [Restricted Area] has been restored to the standard described above.

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7. Easements. In establishing this Restriction, Grantor hereby grants the following easements for the term of this Grant to [each] Grantee, its [their] agents, contractors, subcontractors, and employees:

A. to pass and repass over the Property for purposes of inspecting the [Property] [Restricted Area] to insure compliance with the terms of this Restriction and for purposes of conducting the activities described in Paragraph 7.B, below; and

B. in, on, through, over and under the [Property] [Restricted Area] for purposes of conducting subsurface investigations, installing groundwater monitoring wells, and conduct other investigations of the [Property] [Restricted Area] and/or response actions consistent with (i) CERCLA and the NCP and/or (ii) Chapter 21E and the MCP, related to the Selected Remedy and/or to the Governing Agreement.

8. Construction. This instrument shall be liberally construed to effect its purpose and the policies and purposes of CERCLA and/or Chapter 21E. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid. Any word or defined term contained in this instrument shall be read as singular, plural, masculine, feminine or neuter as the context so requires.

9. Severability. Grantor hereby agrees, in the event that a court or other tribunal determines that any provision of this instrument is invalid or unenforceable:

A. that any such provision shall be deemed automatically modified to conform to the requirements for validity and enforceability as determined by such court or tribunal; or

B. that any such provision that, by its nature, cannot be so modified, shall be deemed deleted from this instrument as though it had never been included.

In either case, the remaining provisions of this instrument shall remain in full force and effect.

10. Enforcement.

A. Grantor expressly acknowledges that a violation of the terms of this instrument could result in the following:

i. the assessment of penalties and other action by [each] Grantee, and its [their] respective successors and assigns, to enforce the terms of this instrument, pursuant to CERCLA and/or M.G.L. c. 21E, and their respective implementing regulations, and other law and regulations, as applicable; and

ii. upon a determination by a court of competent jurisdiction, the issuance of criminal and civil penalties, and/or equitable remedies which could include the issuance of an order to modify or remove any improvements constructed in violation of the terms of this instrument at Grantor's sole cost and

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expense, and/or to reimburse [each] Grantee for any costs incurred in modifying or removing any improvement constructed in violation of the terms of this instrument.

B. Notwithstanding any other provision of this instrument, all rights and remedies (including without limitation sanctions and penalties) available hereunder shall be in addition to, but not in lieu of, any and all rights and remedies (including without limitation sanctions and penalties) at law or in equity, including under CERCLA or Chapter 21E, [and/or pursuant to the Governing Agreement,] which rights and remedies [each] Grantee fully reserves. Enforcement of the terms of this instrument shall be at the discretion of [each] Grantee, and any forbearance, delay or omission to exercise its [their respective] rights under this instrument shall not be deemed to be a waiver by [either] Grantee of such term or any subsequent breach of the same or any other term, or of any of the rights of [either] Grantee under this instrument.

11. Provisions to Run With the Land. This Restriction establishes certain rights, liabilities, agreements and obligations for the Property, or any portion thereof, that shall run with the Property, or any portion thereof, for the term of this Restriction. Grantor hereby covenants for himself/herself/itself and his/her/its executors, administrators, heirs, successors and assigns to stand seized and hold title to the Property, or any portion thereof, subject to this Restriction.

The rights granted to [each] Grantee, its [their] successors and assigns, do not provide, however, that a violation of this Restriction shall result in a forfeiture or reversion of Grantor's title to the Property.

12. Concurrence Presumed. It is agreed that:

A. Grantor and all parties claiming by, through or under Grantor shall be deemed to be in accord with the provisions of this document; and

B. all such parties and any party claiming by, through, or under them, and their respective agents, contractors, sub-contractors and employees, also agree that the Restriction herein established shall not be violated and that their respective interests in the [Property] [Restricted Area] shall be subject to the provisions herein set forth.

13. Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer. Grantor hereby agrees to incorporate this Restriction, in full or by reference, into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property, or any portion thereof, is conveyed.

14. Amendment and Release.

A. Amendment. This instrument, including without limitation any of its Exhibits, or the Plan of Restricted Area, may be amended only with the prior, written approval of Grantee. Grantor may propose to Grantee, with a copy to the Performing Party, an amendment of a use or activity restriction set forth in Paragraph 3 ("Restricted

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Uses and Activities”), or of a permitted use or activity set forth in Paragraph 4 (“Permitted Uses and Activities”), based upon changed circumstances including without limitation new analytic and engineering data. In the event that Grantor requests such an amendment, Grantor shall comply with such requirements as Grantee may identify for that purpose. Grantor agrees to cooperate with Grantee if it becomes necessary to modify this instrument in order to maintain the continued effectiveness of the Selected Remedy. All amendments shall include [each] Grantee’s signed approval and shall become effective upon recording and/or registration with the appropriate registry of deeds and/or land registration office. MassDEP will provide notice to EPA prior to approving an amendment to the Grant. Such notice shall not be a condition of or a requirement for any such amendment to be effective.

B. Release. [Each] Grantee may release its [respective] interest in the Grant, in whole or in part, in its [respective] sole discretion. MassDEP will provide notice to EPA prior to releasing its interest in the Grant. Such notice shall not be a condition of or requirement for any such release to be effective. This Grant shall not be deemed released unless and until [each] Grantee has released its [respective] interest hereunder. Any such release(s) shall become effective upon recording and/or registration with the appropriate registry of deeds and/or land registration office.

C. Recordation and/or Registration. Grantor hereby agrees to record and/or register with the appropriate registry of deeds and/or land registration office any amendment to and/or release of this instrument, or other document created pursuant to this instrument for which such recording and/or registration is required, within thirty (30) days of the date of having received from Grantee(s) any such amendment, release or other such document executed by [each] Grantee and/or evidencing [each] Grantee’s approval, as appropriate, in recordable form. No more than thirty (30) days from the date of such recording and/or registering of said amendment, release and/or other such document, Grantor shall provide a certified registry copy of the amendment, release and/or other such document to [each] Grantee, with a copy to the Performing Party. At that time, or as soon thereafter as it becomes available, Grantor shall provide [each] Grantee with the final recording and/or registration information for the amendment, release, and/or other such document, certified by said registry. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment or release.

D. Notice to Local Officials. In accordance with the requirements set forth in 310 C.M.R. §40.1403(7), as amended, and within thirty (30) days after recording and/or Registering any such amendment, release, or other such document, Grantor shall: (i) provide the [City] [Town] of \_\_\_\_\_ Chief Municipal Officer, Board of Health, Zoning Official and Building Code Enforcement Official with copies of such recorded and/or registered amendment, release or other such document; (ii) publish a legal notice indicating the recording and/or registering of such amendment, release or other such document, and including the information described in 310 C.M.R. §40.1403(7)(b)(1), in a newspaper which circulates in the [City] [Town] of \_\_\_\_\_; and (iii) provide copies of said legal notice to [each] Grantee

within seven (7) days of its publication.

15. Payment of Future Costs. Grantor shall pay all costs incurred by Grantee not inconsistent with CERCLA or Chapter 21E, as applicable, including attorneys fees and interest, in connection with any request by Grantor for an approval, review or other action by Grantee pursuant to the terms of this instrument, including without limitation (i) an approval, including any presumptive approval, pursuant to Paragraph 4 ("Permitted Uses and Activities") of this instrument and (ii) for an approval, pursuant to Paragraph 14 ("Amendment and Release") of this instrument. Such costs shall be due and payable within thirty (30) calendar days of receipt of demand. Grantee reserves the right to issue any determination that may be appropriate in response to any such request from Grantor only upon receipt of payment in full of such costs.

16. No Dedication Intended. Nothing herein shall be construed to be a gift or dedication of the Property to [either] Grantee or to the general public for any purpose whatsoever.

17. Term. This Restriction shall run [in perpetuity] [for a period of \_\_\_\_ years] and is intended to conform to M.G.L. c. 184, § 26, as amended.

18. Notices.

A. General. Any notice, delivery or other communication permitted or required under this instrument, unless otherwise provided in this instrument, shall be in writing and sent by reliable overnight delivery service, delivered in hand or mailed by postage-paid registered or certified mail, return receipt requested. Notices or other communications shall be deemed given, if by overnight delivery service, on the first business day following deposit with such delivery service; if by hand, on the date of the receipt evidencing the hand delivery thereof; or, if by registered or certified mail, three (3) days after deposit in the United States mails; provided that notice of change of address shall be deemed effective only upon receipt.

B. EPA and MassDEP. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to Grantee, EPA and/or MassDEP, as the case may be, it shall be directed to both EPA and MassDEP, to the individuals at the addresses specified below, or as otherwise directed in writing by EPA and/or MassDEP, respectively.

As to EPA:

EPA Remedial Project Manager  
Superfund Site  
United States Environmental Protection Agency, Region I  
One Congress Street, Suite 1100, Mailcode HBO  
Boston, MA 02114

and to:

EPA Enforcement Counsel  
Superfund Site

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United States Environmental Protection Agency, Region I  
One Congress Street, Suite 1100, Mailcode SES  
Boston, MA 02114

As to MassDEP:

Bureau of Waste Site Cleanup  
Department of Environmental Protection  
One Winter Street, \_\_\_<sup>th</sup> Floor  
Boston, MA 02108

Attention: \_\_\_\_\_ Superfund Site Project Manager

[C. Performing Party. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to the Performing Party, it shall be directed to the individual at the address specified below, or as otherwise directed in writing by the Performing Party:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: Coordinator for \_\_\_\_\_ Superfund Site]

19. Assignment. This Grant, including without limitation all easements, rights, covenants, obligations and restrictions inuring to the benefit of [either] Grantee, herein contained, shall be freely assignable by [either] Grantee, in whole or in part, at any time. MassDEP will provide notice to EPA prior to assigning its interest in the Grant. Such notice shall not be a condition of or requirement for any such assignment to be effective.

20. Rights Reserved. Acceptance of this Restriction shall not operate to bar, diminish, nor in any way affect any legal or equitable right of [either] Grantee to issue any future order with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which [either] Grantee may have with respect to the Site.

21. Governing Law; Captions. This instrument shall be governed by and interpreted in accordance with the laws of the United States and of the Commonwealth of Massachusetts, as applicable. All captions and headings contained in this instrument are for convenience of reference only, and shall not be used to govern or interpret the meaning or intent of any provision of this document.

22. Effective Date. This Restriction shall become effective upon its recordation with the appropriate registry of deeds and/or land registration office.

No more than thirty (30) days from the date of recording and/or registration, Grantor shall provide [each] Grantee with a certified registry and/or land registration office copy of this instrument. At that time, or as soon as practicable thereafter, Grantor shall provide [each] Grantee with a copy of this instrument, as recorded, certified by said registry and/or land

registration office.

As this Restriction is a gift, no Massachusetts deed excise stamps are affixed hereto, none being required by law.

WITNESS the execution hereof under seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Name of Grantor]

GRANTOR

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:

My Commission Expires:

*[Include the following paragraph only if MassDEP is a Grantee.]*

In accordance with M.G.L. c. 21E, § 6, as amended, the Commissioner of the Department of Environmental Protection hereby approves this Grant of Environmental Restriction and Easement (as to form only).

Date: \_\_\_\_\_

\_\_\_\_\_  
Commissioner  
Department of Environmental Protection

*[Include the following paragraph only if MassDEP is a Grantee.]*

Upon recording, return to:

Bureau of Waste Site Cleanup  
Department of Environmental Protection  
One Winter Street, 8th Floor  
Boston, MA 02108

Attention: \_\_\_\_\_ Site Project Manager

List of Exhibits

Exhibit A	Legal Description of the Property
[Exhibit A-1	Legal Description of the Restricted Area]
Exhibit B	Compliance Inspection and Reporting Plan
[Exhibit B-1	Operation and Maintenance Plan]

**APPENDIX L**

Criteria for Financial Assurance by the City of Attleboro

United States of America

v.

City of Attleboro, Massachusetts, et al.

## **FINANCIAL ASSURANCE BY THE CITY OF ATTLEBORO**

The City of Attleboro (the "City") shall establish financial assurance for its performance obligations under the Consent Decree in accordance with the following criteria.

1. The City shall maintain a rating of BBB or better, as issued by Standard and Poor's, or Baa or better, as issued by Moody's, on all general obligation bonds not otherwise secured by insurance, a letter of credit or other collateral or guarantee. If the City's bond rating falls below such minimum, it shall comply with the financial ratios set out in 40 C.F.R. § 258.74(f)(1)(i)(B).
2. The City's financial statements shall be prepared in conformity with Generally Accepted Accounting Principles for governments and be audited by an independent certified public accountant.
3. The City shall meet the following additional criteria:
  - a. It shall not be in default on any outstanding general obligation bonds;
  - b. It shall not have operated at a deficit of 5% or more of total annual revenue in each of the past two fiscal years;
  - c. It shall not have received from the independent certified public accountant auditing its financial statement an adverse opinion, disclaimer of opinion, or other qualified opinion that materially impairs its financial assurance for its performance obligations under the Consent Decree;
  - d. The dollar value of the financial obligations under the Consent Decree for which it provides financial assurance shall not exceed 43% of its total annual revenue.
4. Within 90 days following the close of each fiscal year, the City shall provide a letter to the responsible Senior Enforcement Counsel at EPA Region I from a responsible financial officer certifying that the City continues to comply with each of the criteria in Paragraphs 1-3, above, with respect to the City's most recent bond rating, financial statements and audit opinion.



**APPENDIX M**  
Declaration of Trust

United States of America

v.

City of Attleboro, Massachusetts, et al.

**DECLARATION OF TRUST  
SHPACK LANDFILL SUPERFUND SITE  
SETTLEMENT TRUST**

**DECLARATION OF TRUST  
SHPACK LANDFILL SUPERFUND SITE  
SETTLEMENT TRUST**

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**DECLARATION OF TRUST  
SHPACK LANDFILL SUPERFUND SITE  
SETTLEMENT TRUST**

**THIS AGREEMENT** ("Trust Agreement") establishing the Shpack Landfill Superfund Site Settlement Trust ("Trust") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and among the Grantors identified in Appendix A hereto whose authorized representatives have executed this Trust Agreement, and the Trustee(s) identified in Appendix B hereto who have executed this Trust Agreement;

**WHEREAS** the Grantors have entered into a Consent Decree with the United States with respect to the Shpack Landfill Superfund Site (the "Consent Decree"), and have entered into a separate agreement known as the Shpack Landfill Superfund Site Participation Agreement (the "Participation Agreement") (a current copy of which will be provided to the Trustee(s)); and

**WHEREAS** the monies will be transferred to this Trust for purposes of funding the performance of the Work (as defined in the Consent Decree), from and after the approval of the Consent Decree by the United States District Court for the District of Massachusetts, Eastern Division (the "Court").

**NOW, THEREFORE**, the Trustee(s) hereby agree they will hold, manage, invest, reinvest and disburse the monies contributed to the Trust, as required by the Consent Decree and the Participation Agreement, together with any other property hereafter conveyed, assigned, transferred or paid to them, as Trustee(s), in Trust, subject to the terms, provisions and conditions hereinafter set forth:

**SECTION 1. DEFINITIONS** As used in this Trust Agreement:

(a) The term "Consent Decree" shall mean the Consent Decree (a copy of which will be provided to the Trustee(s)) lodged with and approved by the Court and entered into by the United States with certain potentially responsible parties with respect to the Shpack Landfill Superfund Site located in Norton and Attleboro, Massachusetts.

(b) The term "Settling Parties" shall mean those signatories to the Consent Decree that are listed in Appendix \_\_\_\_ to the Consent Decree.

(c) The term "Shpack Site" shall have the meaning assigned to the term "Site" in the Consent Decree.

(d) The term "Grantors" shall mean those Settling Parties which are listed on Appendix A hereto, whose authorized representatives have executed this Agreement. The Grantors are also "Members" under the terms of the Participation Agreement (as hereinafter defined).

(e) The term "Trustee(s)" shall mean the individual(s) listed in Appendix B

hereto and any successor or successors to such individual(s) who are acting as Trustee(s) hereunder.

(f) The term "Group" shall mean the Shpack Site Group established pursuant to the Participation Agreement.

(g) The term "ROD" shall mean the Record of Decision appended to the Consent Decree, as said ROD may be modified from time to time in accordance with the terms of the Consent Decree.

(h) The term "the Work" shall have the meaning assigned to that term in the Consent Decree.

(i) The term "Contractor" shall mean the person(s) or entity(ies) selected and engaged by the Group pursuant to the provisions of the Participation Agreement for the purpose of performing the Work.

(j) The term "SOW" shall mean the Scope of Work attached to the Consent Decree.

(k) The term "Participation Agreement" shall mean the agreement entered into by Grantors and provided to the Trustee(s), which agreement sets forth the manner in which Grantors will undertake to comply with the Consent Decree.

(l) The term "EPA" shall mean the United States Environmental Protection Agency.

## **SECTION 2. NAME AND PURPOSE OF THE TRUST**

The corpus of this Trust shall be known as the Shpack Landfill Superfund Site Settlement Trust Fund (the "Fund"). The purpose of the Fund is to obtain, hold, invest, and disburse funds in order to satisfy the obligations of the Grantors pursuant to the Consent Decree. The parties hereto acknowledge and agree that EPA is a beneficiary of the Trust hereby created for purposes of ensuring the full and final completion of the Work under the Consent Decree.

## **SECTION 3. CONTRIBUTIONS TO THE FUND**

(a) Payments by Grantors into the Fund. The Grantors have agreed to make contributions from time to time to the Fund to cover the projected cost of the Work in such amounts as are required under the terms of the Participation Agreement.

(b) Nature of Contributions by Grantors. All contributions by the Grantors to the Fund shall be made in immediately available funds. All such contributions, together with the earnings thereon, shall be held as a trust fund for the payment of the costs and expenses as in this Trust Agreement provided. Contributions made by Grantors shall not

be construed as fines, penalties or monetary sanctions.

(c) No Transferability of Interest. The interest of the Grantors herein, and their obligation to provide funds under this Section, shall not be transferable, except to a successor corporation or other entity, and then only with the express written consent of the Group.

#### **SECTION 4. DISPOSITIVE PROVISIONS**

(a) Payment of Income and Principal. During the term of this Trust, upon written instructions from the Group or its designee(s), the Trustee(s) shall cause to be paid such part (or all) of the income and principal of the Fund as is necessary to pay costs incurred in connection with the administration of this Trust (but only if and to the extent that such costs are not paid by the Group in accordance with Section 9 hereof) and the performance, supervision and administration of the response actions and all other activities which are required, or otherwise deemed appropriate by the Group, to be conducted under, pursuant to or in connection with the Consent Decree and all of the documents appended thereto or referenced therein. In this regard, the Trustee(s) shall pay all bills and invoices approved and directed for payment in writing by the Group or its designee(s). Copies of such directions for payment of approved bills and invoices shall be sent to EPA by the Group or its designee(s) at the time they are forwarded to the Trustees. Bills and invoices to be paid by the Trustee(s), after approval by the Group or its designee(s), include, but are not limited to, bills from Contractor(s) and bills for oversight or administration costs incurred with respect to the Work. The Trustees shall be entitled to rely upon the Group's said directions for the payment of bills and invoices as conclusively establishing that the items covered thereby duly fall within the categories of costs authorized for payment under the terms of this Trust Agreement.

(b) No Authority to Conduct Business. The purpose of the Fund is limited to the matters set forth herein, and this Trust Agreement shall not be construed to confer upon the Trustee(s) any authority to carry on any business or activity for profit or to divide the gains therefrom among the Grantors. While this Trust Agreement is in effect, disbursements from the Fund are to be governed exclusively by the express terms of this Trust Agreement.

(c) Time of Termination of Trust. This Trust shall terminate upon the satisfaction of all of the Grantors' obligations (except for the document retention obligations set forth in Section XXV of the Consent Decree) under the Consent Decree as approved in writing by EPA; provided, however, that this Trust may be terminated at an earlier date if such termination (i) is authorized by a vote of eighty percent (80%) of the total Voting Power of the Grantors under the terms of the Participation Agreement and (ii) is approved in writing by EPA.

(d) Distribution of Fund Upon Termination.

(i) Upon termination of this Trust following satisfaction of all of the

Grantors' obligations under the Consent Decree (except for the document retention obligations set forth in Section XXV of the Consent Decree) as approved in writing by EPA, the Trustee(s) shall liquidate the assets of the Fund and thereupon distribute the remaining trust property, including all accrued accumulated and undistributed net income, to the Grantors in proportion to their respective percentage shares of Shared Costs under the terms of the Participation Agreement. If any Grantor, or its successor, shall have defaulted with respect to its obligations under the Participation Agreement and shall remain in default at the time of termination hereunder, or if any Grantor, or its successor, cannot be located within thirty (30) days after the termination date after diligent effort, the share of such defaulting or missing Grantor of the Trust shall be deemed to be forfeited, and the Trustee(s) shall distribute such forfeited share to the remaining Grantors in proportion to their respective percentage shares of Shared Costs under the terms of the Participation Agreement, as said percentage shares shall be increased pursuant to the provisions of Section 9.2 of the Participation Agreement in order to take into account the shares of those Grantors that are not entitled to a distribution.

(ii) Upon termination of this Trust following an authorizing vote by the Grantors and approval in writing by EPA as aforesaid, the Trustee(s) shall liquidate the assets of the Fund and thereupon distribute the remaining trust property in accordance with the instructions set forth in said authorizing vote and approval.

(c) Alterations, Amendments, and Revocation. This Trust Agreement may be altered, amended, or revoked from time to time by an instrument in writing executed by the Trustee(s) and by a vote of sixty percent (60%) of the Voting Power of the Grantors as provided in the Participation Agreement; provided, however, that no such alteration, amendment, or revocation may conflict with or modify in any respect the obligations of the Settling Parties under the Consent Decree, and provided further (1) that any alteration, amendment, or revocation shall be subject to approval by EPA, and (2) that Sections 8 and 12 hereof shall not be revoked and shall not be altered or amended to limit the effect thereof with respect to acts or omissions taken or made prior to such alteration or amendment.

## **SECTION 5. TRUSTEE(S) MANAGEMENT**

Subject to the limitations set forth below regarding "Permitted Investments," the Trustee(s) shall invest and reinvest the principal and income of the Fund and keep the Fund invested in one or more accounts which shall be treated as a single fund without distinction between principal and income. All investments shall be made so as to at all times provide sufficient liquidity to meet the anticipated cash needs of the Fund. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee(s) shall discharge their duties with respect to the Fund solely in the interest of the accomplishment of the purposes and objectives of this Trust Agreement. Upon approval by the Group, the Trustee(s) may engage the services of an investment adviser or manager, may rely on the advice of such adviser or manager, and may delegate investment decision-making authority to such adviser or manager with respect to

management of the Fund. The Trustee(s) shall not be personally liable for any action or inaction taken in good faith reliance on the advice of such adviser or manager, nor for delegation in good faith of investment decision-making authority to such adviser or manager, unless attributable to the Trustee(s)' gross negligence or willful misconduct. The Trustee(s) shall keep or arrange to be kept full and accurate accounting of all contributions to and disbursements from the Fund. Notwithstanding the foregoing, the Trustees shall invest and reinvest the principal and income of the Fund in only one or more of the following, which shall constitute "Permitted Investments":

- (a) any obligation issued or guaranteed by the United States of America or any State or territory thereof, or any agency or instrumentality of the foregoing, or any money fund which invests solely in the foregoing obligations;
- (b) any obligation issued or guaranteed by any municipality in the United States, or any agency or instrumentality thereof, which is rated A (or better) by Standard & Poor's corporation or Moody's Investor's Service, Inc. at the time of investment;
- (c) certificates of deposit of, accounts with, repurchase obligations of, or money funds or other obligation of banks or of corporations endowed with trust powers having capital and surplus in excess of \$100,000,000;
- (d) certificates of deposit of, accounts with, or other obligations of any bank or corporation endowed with trust powers, provided that the full amount of any such certificate of deposit, account, or other obligation is insured by FDIC or FSLIC; and
- (e) such other investments approved as may be approved in writing by EPA.

#### **SECTION 6. EXPRESS POWERS OF TRUSTEE(S)**

Without in any way limiting the powers and discretion conferred upon the Trustee(s) by the other provisions of this Trust Agreement or by law, the Trustee(s) are expressly authorized and empowered:



(a) Payment of Expenses of Administration. To incur and pay any and all charges, taxes, and expenses upon or connected with the Fund in the discharge of their fiduciary obligations under this Trust Agreement. In accordance with Section 9 hereof, all such payments shall either be made by the Group on behalf of the Trustee(s) or be reimbursed by the Group to the Trustee(s). Only if and to the extent that any such payments are not so paid or reimbursed by the Group, then such payments shall be made by the Trustee(s) using the assets of the Fund.

(b) Retention of Property. To hold and retain all or any part of the Fund in the form in which the same may be at the time of the receipt by the Trustee(s), as long as they shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.

(c) Preservation of Principal. Notwithstanding any other provision in this Trust Agreement, to at all times hold, manage, invest, and reinvest the assets of the Fund in a manner designed to preserve the accrued income and principal of the Fund for the purposes of the Fund.

(d) Retention of Investment Adviser and Other Consultants. Upon approval by the Group, to engage the services of (and pay compensation to) an investment adviser, accountants, agents, managers or other consultants with respect to the management of investments of the Fund, the management of the Fund, or any other matters.

(e) Execution of Documents of Transfer. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(f) Litigation. To institute litigation in the name of the Fund upon direction from the Group, and to cooperate with the Group in its prosecution or defense of litigation.

(g) Discretion in Exercise of Powers. To do any and all other acts which they shall deem proper to effectuate the purposes hereof and to exercise the powers specifically conferred upon them by this Trust Agreement.

## **SECTION 7. GOVERNANCE OF THE TRUSTEE(S)**

(a) Action may be taken, except as otherwise provided herein, by a majority of the Trustee(s) then in office at any meeting of the Trustee(s), at which a quorum is present or by the sole Trustee if there is only one Trustee then serving hereunder. At any meeting of the Trustee(s), if there is more than one Trustee then serving hereunder, a majority of the Trustee(s) then in office shall constitute a quorum for the transaction of business. Less than a quorum may adjourn any meeting from time to time, and the meeting may be held as adjourned without further notice. Meetings may be held by telephone conference.

(b) Any action may be taken by the Trustee(s) without a meeting if all the Trustee(s) then in office consent to the action in writing and such written consents are filed with the records of the Trustee(s).

(c) Any action of the Trustee(s) required to approve an amendment of this Trust Agreement or the termination of this Trust as provided herein shall require the affirmative vote and signatures of a majority of the Trustee(s) then in office or of the sole Trustee if there is only one Trustee then serving hereunder.

## **SECTION 8. ADVICE OF COUNSEL**

After notice to and, if so requested, consultation with the Group, the Trustee(s) may from time to time consult with counsel, who may be counsel to any of the Grantors if authorized by the Group, with respect to any question arising as to compliance with this Trust Agreement. The Trustee(s) shall be fully protected in acting in reliance upon the advice of counsel.

## **SECTION 9. TRUSTEE COMPENSATION; COSTS OF ADMINISTRATION**

The Trustee(s) may receive reasonable compensation as determined by the Group for their services as Trustee(s) under this Trust Agreement. Such compensation shall be paid to the Trustee(s) by the Group. The Trustee(s) shall also be reimbursed by the Group for expenses, including travel expenses, reasonably required and incurred by them in the performance of their duties as Trustee(s). Additionally, the Group shall either pay or reimburse the Trustee(s) for all other costs incurred by or on behalf of the Trustees in connection with the administration of this Trust.

## **SECTION 10. NUMBER OF TRUSTEE(S) AND APPOINTMENT OF SUCCESSOR TRUSTEE(S)**

(a) Number of Trustee(s). There shall at all times be at least one Trustee, appointed by the Group. The number of Trustee(s) may be increased or reduced (so long as there is always at least one Trustee) by the Group at any time and from time to time, and the new positions created thereby shall be filled by the Group.

(b) Vacancy Caused by Resignation or Removal. Any Trustee may resign at any time by delivering his resignation in writing to the Group, or the Group may remove any Trustee by delivering notice of such removal in writing to such Trustee, such resignation or removal to take effect within thirty (30) days after delivery of the notice of resignation or removal or upon the acceptance of appointment in writing by a successor Trustee, whichever is earlier. Notwithstanding the foregoing, the resignation or removal of the sole Trustee shall not take effect until the acceptance of appointment in writing by his or her successor Trustee.

(c) Appointment of Successor Trustee(s). Any vacancy in the office of Trustee created by death, resignation or removal by the Group of a Trustee shall be filled by the Group by an appointment in writing of a successor Trustee. In the event that any such vacancy in the office of Trustee is not filled by the Group within thirty (30) days after the receipt by the Group of a written request by the EPA Regional Administrator to do so, such vacancy may be filled by an appointment of a successor Trustee by a court of competent jurisdiction at the request of the EPA Regional Administrator. Any successor Trustee appointed by the Group or by a Court shall be selected from among the Grantors, their officers, employees or representatives.

(d) Acceptance of Appointment by Successor Trustee(s). Acceptance of appointment as a successor Trustee shall be in writing and shall become effective upon receipt by the Group of notice of such acceptance. Upon the acceptance of appointment of any successor Trustee, title to the Fund shall thereupon be vested in said successor Trustee, jointly with the remaining Trustee(s), if any, without the necessity of any conveyance or instrument. Each successor Trustee shall have all of the rights, powers, duties, authority, and privileges as if initially named as a Trustee hereunder.

(e) Preservation of Record of Chances in Trustee(s). A copy of each instrument of resignation, removal, appointment and acceptance of appointment shall be attached to an executed counterpart of this Trust Agreement in the custody of the Group.

## **SECTION 11. INSTRUCTIONS TO THE TRUSTEE(S)**

Notwithstanding anything herein to the contrary, the Trustee(s) are hereby directed to do the following in addition to other duties set forth in other provisions of this Trust Agreement:

(a) Have prepared quarterly financial reports during performance of the construction portion of the Work describing the manner in which the assets of the Fund are then invested and the current market value of such assets, as well as the obligations, income, and expenses of the Fund. Copies of such reports shall be transmitted in writing to the Group and to EPA.

(b) Have prepared annual financial statements during performance of the construction portion of the Work and the operation and maintenance portion of the Work describing the manner in which the assets of the Fund are then invested and the current market value of such assets, as well as the obligations, income, and expenses of the Fund. All financial statements shall be prepared on a cash basis, and shall be in accordance with Generally Accepted Accounting Principles, applied on a consistent basis. Copies of such statements shall be transmitted in writing to the Group and to EPA.

(c) Advise, consult and confer with and otherwise inform the Group upon any request by the Group or with respect to matters arising out of this Trust Agreement, administration of the Fund, or any other matter which the Trustee(s), in their discretion, deem appropriate to bring to the attention of the Group.

(d) Have maintained records of all actions taken by the Trustee(s) with respect to matters arising out of this Trust Agreement or administration of the Fund. Copies of said records shall be provided to the Group upon request, and upon termination of this Trust said records shall be transmitted, together with all other records of the Trustee(s), to the Group.

The Trustee(s) shall have the right to assume and fully rely upon, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any Member of the Group has occurred.

## **SECTION 12. IMMUNITY AND INDEMNIFICATION**

Each Trustee, whether initially named or appointed as a successor Trustee, acts as a Trustee only and not personally; and in respect of any contract, obligation or liability made or incurred by the Trustee(s) or any of them hereunder in good faith, all persons shall look solely to the Fund and not the Trustee(s) personally. The Trustee(s) shall not incur personal liability of any nature in connection with any act or omission, made in good faith, of the Trustee(s) or the Grantors in the administration of the Fund or otherwise pursuant to this Trust Agreement, excepting, however, liability which results from the Trustee(s)' gross negligence or willful misconduct. All Trustee(s) who serve hereunder shall be defended, indemnified and held harmless by the Fund and jointly and severally by the Grantors from and against any and all claims, damages, demands, causes of action, losses, costs and expenses, including attorneys' fees and court and arbitration costs, and any other losses of any kind or nature whatsoever arising during or on account of, in connection with or as a result of their performance hereunder or on account of any acts or omissions of the Group or its designee(s), unless attributable to the Trustee(s)' gross negligence or willful misconduct. The provisions of this section shall survive the termination of the Trust.

## **SECTION 13. INTERESTS NOT ASSIGNABLE OR SUBJECT TO CLAIMS OF CREDITORS**

The interest of any Grantor in the Fund shall not be subject to anticipation or assignment, nor shall it be subject to the claims of any creditor of any Grantor.

#### **SECTION 14. SPECIAL PROVISIONS RELATING TO EPA'S TAKEOVER OF THE WORK**

If, at any time during the term of the Trust Agreement, EPA implements a "Work Takeover" pursuant to the terms of the Consent Decree and intends to direct payment of monies from the Fund to pay for performance of Work during the period of such Work Takeover, EPA shall notify the Trustee(s) in writing of EPA's commencement of such Work Takeover. Upon receiving such written notice from EPA, the disbursement procedures set forth in Section 4 hereof shall immediately be suspended, and the Trustee shall thereafter make payments from the Fund only to such person or persons as EPA may direct in writing from time to time for the sole purpose of providing payment for performance of Work required by the Consent Decree. Further, after receiving such written notice from EPA, the Trustee(s) shall not make any disbursements from the Fund at the request of the Group or the Grantors, including its or their representatives and/or contractors, or of any other person except at the express written direction of EPA. If EPA ceases such a Work Takeover in accordance with the terms of the Consent Decree, EPA shall so notify the Trustee(s) in writing and, upon the Trustee's(s') receipt of such notice, the disbursement procedures specified in Section 4 hereof shall be reinstated.

#### **SECTION 15. CHOICE OF LAW**

This Trust Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Massachusetts, except to the extent that Federal law shall apply to questions arising under the Comprehensive Environmental Response, Compensation and Liability Act, or the National Contingency Plan promulgated thereunder.

#### **SECTION 16. INTERPRETATION**

As used in this Trust Agreement, words in the singular include the plural and words in the plural include the singular; and the masculine and neuter genders shall be deemed to include the masculine, feminine and neuter. The descriptive heading for each Section and Subsection of this Trust Agreement shall not affect the interpretation or the legal efficacy of this Trust Agreement. It is agreed that neither the entering into this Trust Agreement nor contribution to the Fund nor any action taken under this Trust Agreement shall be deemed to constitute an admission of any liability or fault on the part of the Trustee(s) or the Grantors, or any of them, with respect to the Shpack, or otherwise, nor does it constitute a commitment or agreement, either express or implied, by any or all of them to undertake any further activities outside the scope of the Work, the Consent Decree, or the Participation Agreement.

#### **SECTION 17. SEPARATE DOCUMENTS**

This Trust Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **SECTION 18. SUCCESSORS AND ASSIGNS**

This Trust Agreement shall be binding upon the successors and assigns of the Grantors. No assignment or delegation of the obligation to make any payment hereunder will release the assigning Grantor from such obligation.

#### **SECTION 19. EFFECTIVE DATE**

This Trust Agreement shall take effect on the Effective Date of the Consent Decree. If, for any reason, the Court shall decline to approve the Consent Decree so that it does not become effective, then this Trust Agreement shall not take effect.

**WITNESS** the execution hereof by the Trustee(s) as of the date first above written.

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**DECLARATION OF TRUST  
SHPACK LANDFILL SUPERFUND SITE  
SETTLEMENT TRUST**

**Signature Page**

**WITNESS** the execution hereof by the undersigned Company by it or its authorized representative as of the date of this Trust Agreement.

Name of Company: \_\_\_\_\_

Name of Signer: \_\_\_\_\_

Title of Signer: \_\_\_\_\_

Company Taxpayer Identification Number: \_\_\_\_\_

Designated Representative for Receipt of Notice and Invoices: Name:

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

**DECLARATION OF TRUST  
SHPACK LANDFILL SUPERFUND SITE  
SETTLEMENT TRUST**

**List of Appendices**

Appendix A: List of Grantors of the Shpack Landfill Superfund Site Settlement Trust

Appendix B: List of Original Trustee(s) of the Shpack Landfill Superfund Site Settlement Trust



**DECLARATION OF TRUST  
SHPACK LANDFILL SUPERFUND SITE  
SETTLEMENT TRUST**

**APPENDIX A**

**List of Grantors of the Shpack Landfill  
Superfund Site Settlement Trust**